

(1) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

(2) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating, or demolishing and rebuilding for sale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(3) Maintaining and managing real estate; and

(4) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, the service corporation, or a lower-tier entity in which the service corporation invests.

(f) Securities activities, liquidity management, and coins.

(1) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and state securities regulators, as required by applicable Federal and state law and regulations;

(2) Liquidity management;

(3) Issuing notes, bonds, debentures, or other obligations or securities;

(4) Purchase or sale of coins issued by the U.S. Treasury.

(g) *Investments.* (1) Tax-exempt bonds used to finance residential real property for family units;

(2) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(3) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(4) Rural business investment companies; and

(5) Investing in savings accounts of an investing thrift.

(h) Community development and charitable activities:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing,

small farms, or businesses that are local in character;

(2) Investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs);

(3) Investments in low-income housing tax credit and new markets tax credit projects and entities authorized by statute (e.g., community development financial institutions) to promote community, inner city, and community development purposes; and

(4) Establishing a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(i) Activities conducted on behalf of a customer on an other than "as principal" basis.

(j) Activities reasonably incident to those listed in paragraphs (a) through (i) of this section if the service corporation engages in those activities.

§ 159.5 How much may a Federal savings association invest in service corporations or lower-tier entities?

The amount that a Federal savings association ("you") may invest in a service corporation or any lower-tier entity depends upon several factors. These include your total assets, your capital, the purpose of the investment, and your ownership interest in the service corporation or entity.

(a) Under section 5(c)(4)(B) of the HOLA, you may invest up to 3% of your assets in the capital stock, obligations, and other securities of service corporations. Any investment you make under this paragraph that would cause your investment, in the aggregate, to exceed 2% of your assets must serve primarily community, inner city, or community development purposes. You must designate the investments serving those purposes, which include:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing,

§ 159.10

12 CFR Ch. I (1–1–13 Edition)

small farms, or businesses that are local in character;

(2) Investments for the preservation or revitalization of either urban or rural communities;

(3) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(4) Other community, inner city, or community development-related investments approved by the OTS or the OCC.

(b) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 160 of this chapter, and available capacity within any applicable investment limits, you may make loans to any service corporation and any lower-tier entity, subject to the following conditions:

(1) You and your GAAP-consolidated subsidiaries may, in the aggregate, make loans of up to 15% of your total capital, as described in part 167 of this chapter to each subordinate organization that does not qualify as a GAAP-consolidated subsidiary. All loans made under this paragraph (b)(1) may not, in the aggregate, exceed 50% of your total capital, as described in part 167 of this chapter.

(2) The OCC may limit the amount of loans to a GAAP-consolidated subsidiary, or may adjust the limits set forth in paragraph (b)(1) of this section where safety and soundness considerations warrant such action.

(c) For purposes of this section, the terms “loans” and “obligations” include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

§ 159.10 How must separate corporate identities be maintained?

(a) Each Federal savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OCC regulations that apply both to Federal savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

§ 159.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association (“you”) must file a notice (“Notice”) under part 116, subpart A of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice should be filed with the appropriate OCC licensing office and must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR 362.15. Providing the OCC with a copy of the notice you file with the FDIC will satisfy this requirement. If the OCC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the OCC’s prior written approval under the standard treatment processing procedures at part 116, subpart A and E of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 159.12 How may a subsidiary of a Federal savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent